COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF AGRICULTURE

DAIRY AND FOOD BUREAU

BULLETIN No. 309

PRELIMINARY REPORT

OF THE

Dairy and Food Commissioner

FOR THE YEAR 1917

CHAS. E. PATTON,
Secretary of Agriculture.

JAMES FOUST,
Dairy and Food Commissioner.

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VIRTUE
LIBERTY AND
INDEPENDENCE

LETTER OF TRANSMITTAL.

Hon. Charles E. Patton, Secretary of Agriculture.

Dear Sir: I have the honor to submit herewith a preliminary report of the Dairy and Food Bureau of the Department of Agriculture, for the year ending December 31, 1917. It covers the operations for the year and contains some details that may be useful for public information.

I have the honor to remain,

Very Respectfully,
JAMES FOUST.
Dairy and Food Commissioner.

PREFACE.

In view of the fact that the full Report of the Department of Agriculture for the year 1917, containing the reports of the several Bureaus of the Department, will not be ready for distribution for some weeks, the Dairy and Food Commissioner has, as in recent preceding years, furnished the Head of the Department with the following preliminary report. In order that this information may be promptly made available to the public, its issue, as a bulletin of the Department, is authorized.

The more detailed report of the operations of the Dairy and Food Bureau will appear in the regular Annual Department Report.

CHAS. E. PATTON,
Secretary of Agriculture.

THE CONDITIONS OF THE BUREAU'S WORK DURING 1917

The general nature of the work of the Dairy and Food Bureau for the past year has not differed from that marking the years immediately preceding. But the conditions of food supply and demand have departed increasingly from the normal. The price increases due to the abnormal volume of American food stuffs purchased for export during the first years of the great war have, with our own entry as a combatant, and with our large responsibilities for the support of our allies, tended still further to mount to high levels. The new condition has indeed already appeared and we are now not merely selling what we can spare without changing our own customary food habits, but we are reducing our own stocks of certain important staple foods to aid our allies and feed our own army and navy, and are facing, in consequence, the need for a very marked change in our table habits.

The food laws of America were devised not only to prevent the introduction into our articles of diet of materials that are deleterious to health, but also to secure the sale of every food article for exactly what it is. We have come to the era in which substitutes are urged by the Government, not any longer merely by the substitute-maker for his own advantage. The high prices for staples offer special temptations to the delivery of substitutes without warning of their nature in place of the normal foods sought.

Of course, when we can't get an adequate supply of the things we most prefer, we are glad enough that there are wholesome substitutes that will serve the same use, even though less satisfactory to our palates. But the fact that the substitutes have value is no sufficient reason to grant the pleas now being made by most substitute producers that they be allowed use without notice of their introduction in the manufacture of complex commercial foods.

The nation has determined that it must fight on the battle grounds of Europe to keep the world safe for democracy. We must no less keep the battle going against those who would make our own democracy unsafe by deceiving its people.

The duty, therefore, of the food executive is especially responsible in these times of food shortage, food change and high food prices.

Enforcement of Food Laws

Under our system of government, a highly complex system with laws covering a very wide range of subject matter, a number of ele-

ments must co-operate to secure the efficient enforcement of any particular law or group of laws. The most important element is educational in its nature. It is a convenient legal fiction that every citizen is supposed to know the law; convenient, that is, for the purposes of the court. The supposition is doubtless well based when it is applied to the major criminal laws, but it represents an absolute impossibility when it is applied to the tremendous volume of our statutes that deal with regulatory matters, especially those of minor character. If the citizen is to obey the law, he must, therefore, be educated in it, or at least in such part of it as most considerably affects his business or the principal activities of his life. In earlier reports I have spoken of the great value of the services rendered by the public press in making known to the citizens the requirements of the laws with whose enforcement this Bureau is charged. I have referred also to the invaluable assistance given by the great organizations of food manufacturers and food dealers, not only in acquainting their members with the precise requirements of the laws, but also in giving the moral support of these associations to the enforcement of these laws.

The second element is always necessary, not for the average citizen or average business man, but for the less frequent, negligent, overshrewd, obstinate, or over-greedy business man. That element is the presence in the law of an adequate penalty against its violators and the assurance that those who break the law will pay the penalty. Our food laws do not lack penal provisions reasonably adjusted to the character of the offenses prescribed.

When the law is broken without the payment of a penalty by its violators, the first object of public condemnation is the executive officer charged with the enforcement of the law.

Before that officer is condemned or even suspected of laxity in the performance of his duty, the well-informed American citizen should instantly realize that the infliction of a sentence is not the work of the executive officer under our system of government. All he can do when he is satisfied that there is a violation of the law is to present the facts carefully prepared for the consideration of the courts. It sometimes happens that courts and juries differ from the executive officer in their view of the facts as related to the law. Courts and juries have the last say, and when they differ from the executive the responsibility of the latter ceases. It sometimes happens, however, that the executive officer and the jury agree as to the facts in their relation to the law and that the court finds no ground for dissent from that view, but is led to modify the penalty by suspending sentence. There are doubtless certain classes of reasons adequate to justify such suspensions, but it must be perfectly clear

that if the suspensions are frequent, as they sometimes have been, and such suspensions are not clearly justified by the demand of the defendant for opportunity for a review of the case, the general effect of such frequent suspensions must be to reduce considerably the fear of offenders that violators of the law shall certainly be punished.

In this connection I have ventured to urge the very great importance of a recent decision prepared by the Chief Justice of the United States Supreme Court in respect to the legality of sentence suspensions. For the convenience of all who have responsibility in connection with the enforcement of the Pennsylvania food laws, this opinion is incorporated in the Appendix to this report.

The Work of the Year

In Table A of the Appendix is presented a classified summary of the food articles sampled by the agents of the Bureau and analyzed by its chemists during 1917. Schedule B of the summary shows the number of prosecutions instituted during the year, with very few exceptions upon the basis of the current years examinations, and the classification of the prosecutions ordered with respect to the food materials charged to be adulterated, misbranded, or otherwise illegal; also the distribution as to frequency of the prosecutions instituted in the several months of the year. In this summary appear very brief statements of the grounds upon which prosecutions have been instituted in the respective classes of cases, and finally, there is given (C) a list of the cases terminated during the current year, arranged in accordance with the respective acts under which prosecutions were brought.

Comment is here reserved with respect to certain classes of offenses appearing worthy of special note at this time.

The summaries just mentioned will afford those interested in the service of the Bureau a very clear idea of the great variety of food materials kept under the Bureau's supervision, and also, they serve to give a fair notion of the kinds of adulterations at present most common.

In Schedules D and E of the Appendix are presented a statement of the Bureau's receipts from various sources and a classified account of the amounts expended from the appropriation made by the Legislature for the maintenance of the Bureau's work during the past year.

It is especially important to note that the service rendered to the public by the Bureau is not stationary in volume, but is steadily growing.

The following comparative statement, covering the years 1907 to 1917, inclusive, will exhibit this fact:

Year.	Samples Analyzed.	Cases Terminated.	Receipts.	Expenditures
1907,	7,400	664	$55,732 63	$78,455 88
1908,	8,300	300	54,580 62	69,968 20
1909,	6,200	797	86,594 15	83,700 00
1910,	5,594	667	110,802 95	79,661 65
1911,	8,200	1,029	120,993 48	83,083 15
1912,	7,204	1,049	136,125 49	81,858 55
1913,	6,846	1,025	173,789 76	75,587 12
1914,	4,827	1,010	225,910 78	73,271 41
1915,	8,939	1,165	279,055 40	85,901 36
1916,	5,807	1,093	303,367 03	77,931 97
1917,	8,701	1,169	373,150 48	81,320 31
	78,018	9,968	$1,920,102 77	$870,739 60

The number of samples analyzed in 1917 was eight thousand seven hundred and one, a larger number than during any of the ten preceding years, except the year 1915. The cases terminated were one thousand one hundred and sixty-nine, the largest number in the history of the Bureau. The total number of prosecutions ordered as the result of the work during 1917 was one thousand three hundred and sixty-seven, a number about twenty-five per cent. higher than that for 1916. The expenditures made in accomplishing this work have, however, been kept down well within the limits of earlier years. The Bureau is made responsible for the receipt and transmittal to the treasury of various fines imposed upon violators of food laws, and also of the license fees required for cold storage establishments and from manufacturers and vendors of oleomargarine. The foregoing statement shows a very large increase during the current year in the total receipts from the collective source just named, the increase during 1917 being, in round figures, $70,000; the next highest increase for a single year having been that for 1915, which was about $53,000 in excess of the receipts for 1914.

A very considerable fraction of this increase has been due to the greater number of penalties inflicted for the violation of the law, but the larger part of it has been due to the very much greater number of oleomargarine licenses issued.

In 1907, the number of such licenses granted was three hundred and fifty-one; in 1917, four thousand three hundred and sixty-four, or nearly twelve times as many. In these days of high butter prices there is doubtless an increasing use of oleomargarine, but this increased use by no means explains the tremendous increase in the number of licenses granted. A very important reason is to be found in the improved character of our oleomargarine legislation in the

Act as amended in 1913. It has been possible to bring oleomargarine cases to a satisfactory determination with much greater certainty than under the more vague laws under which procedure had earlier to be taken. Furthermore, the vigorous action of the courts, especially Judge Macfarlane of Pittsburgh and Judge Audenried of Philadelphia, in inflicting jail sentences upon old violators of the Oleomargarine Act resulted in a much higher measure of respect for this law. The result has been that moonshiners and peddlers who frequently sold oleomargarine as butter, have been largely driven out of that fraudulent business and that reputable merchants have applied for licenses and conducted the business with proper regard for the law's requirements.

It will be observed from the figures given for receipts and expenditures that the gross receipts of the Bureau during 1917 were $291,830.17 in excess of the year's expenditures of that Bureau; and that during the entire period of the eleven years covered by the statement, the excess of receipts was $1,049,363.17 in excess of the expenditures for that period of years. To avoid misconception of the facts, it should again be made known in this connection that the Bureau is maintained exclusively by specific appropriations granted from time to time by the Legislature, and that all receipts by the Bureau are transmitted promptly to the State Treasurer and by him covered into the general treasury.

Cold Storage Warehouses

The agents of the Bureau have continuously examined the condition of the cold storage warehouses of the State in which foods are stored to see that the warehouses were kept in a sanitary condition, that the foods delivered therefrom were properly tagged so as to declare their having been subject to cold storage, and to see that materials that had become unfit for use as food were not delivered into the channels of food trade; and also to secure the observance of the requirements of the State Cold Storage Law with respect to the time limits for such storage of foods. The reports of foods held in the cold storage warehouses during the current year are summarized in the following table:

QUANTITIES OF FOODS IN PENNSYLVANIA COLD STORAGE WAREHOUSES.

Foods.	Units of Quantity.	1917, Mar. 31.	1917, June 30.	1917, Sept. 30.	1917, Dec. 31.
Meats:					
Whole carcasses:					
Beef,	Lbs.,	554,259	175,465	226,391	211,936
Veal,	Lbs.,	41,778	51,498	40,851	57,176
Lamb and Mutton,	Lbs.,	187,523	73,646	183,424	282,457
Pork,	Lbs.,	26,980	43,803	171,268	6,823
Parts of carcasses:					
Beef,	Lbs.,	1,402,570	1,956,440	1,596,152	2,378,043
Calf Sweetbreads,	Doz.,			15½	141
Veal,	Lbs.,	53,558	69,599	84,726	50,420
Veal Breads,	Doz.,	83½			
Lamb and Mutton,	Lbs.,	94,896	91,261	56,463	172,213
Pork,	Lbs.,	1,827,882	1,496,926	1,610,502	915,912
Game,	Lbs.,	6,382	5,619	3,935	25,673
Game,	Doz.,				11
Game,	Prs.,				41½
Fish,	Lbs.,	1,153,977	1,598,265	4,000,653	5,048,134
Domestic Poultry,	Lbs.,	7,059,754	4,937,963	1,644,532	1,431,686
Eggs:					
In shell,	Doz.,	164,337	16,577,051	14,367,202	4,242,523
Broken,	Lbs.,	269,642	421,234	764,405	744,547
Butter,	Lbs.,	1,176,801	4,173,846	10,923,322	6,190,938

The foregoing table does not represent the entire volume of the foods named that has passed through the cold storage warehouses of the State during the current year. It simply presents cross sections of the food stream passing through cold storage channels in this Commonwealth. It must be recalled that foods held in cold storage in other states may be and frequently are shipped in large quantities into Pennsylvania for retail sale; also, that foods held in cold storage in Pennsylvania may be shipped to other states for retail.

It is obvious, therefore, that a summary of the stocks of cold stored food held in the State cannot adequately represent the net volume of such foods sold during any year to people of this Commonwealth. The figures given serve rather to picture the volume of the food business in the cold storage plants in Pennsylvania; and since these figures represent only four dates out of the entire year, they can picture that but approximately. The following summary for average quantities of the respective groups of cold stored foods held in Pennsylvania warehouses on the first days of March, June, September and December during the past three years will doubtless give an even better representation of the service which these establishments are rendering:

AVERAGES OF QUARTERLY REPORTS OF FOODS HELD IN COLD STORAGE.

	1915.	1916.	1917.
Meats, other than game, lbs.,	2,794,034	2,982,312	4,048,245
Fish, lbs.,	2,642,245	2,552,336	2,950,257
Poultry, lbs.,	2,286,277	2,481,841	3,768 484
Eggs in shell, dozs.,	9,748,831	7,555,143	8,837,778
Broken, lbs.,	368,968	351,450	549,957
Butter, lbs.,	7,017,156	5,059,392	5,616,228

This table gives as nearly as present official conditions will permit an idea of the average daily volume of foods in cold storage in the State. The food materials represented are by no means exclusively of local production, and the figures form too small a fraction of the total foods held in cold storage in the country to justify detailed discussion. They do serve, however, to emphasize the importance of these cold storage agencies in the preservation of the modern food supply. The schedules in the Appendix show that only seventy-three samples of doubtful condition were taken from cold stored food products for examination by the chemists of the Bureau, and seventy-one prosecutions were ordered for violation of the Cold Storage Act. Nearly all of the latter cases were for failure to affix the proper marks to cold stored food and were not because of such deterioration of these foods or such unsanitary condition that they had become unfit for human consumption. In this connection it may be noted also that out of the one hundred and three cases terminated during the year for violation of the Cold Storage Act of 1913, all but four were due to failures of the retailers properly to mark the foods as cold storage foods.

The Cold Storage Act of 1913, has been the subject of a highly important legal opinion during the past year. Judge Carpenter of the Allegheny Courts has, in connection with a suit brought under the act, handed down an opinion that with respect to Section sixteen thereof, fixing time limits for the cold storage of foods, the Act was in contravention of both the State's Constitution and that of the United States, in that it deprived the defendant of his property without due process of law. The case was thereupon appealed, and the Superior Court by an unanimous opinion reversed the lower court and affirmed the constitutionality of the Act with respect to the point at issue.

Oleomargarine

The agents of the Bureau have been especially vigilant with respect to the violators of the requirements of the Oleomargarine Act, in view of the food trade conditions earlier mentioned. I am gratified to be able to report a very satisfactory condition. Despite the great increase in the number of licenses for the sale of this commodity, the number of cases in which violations of the act have been discovered is distinctly lower than in 1916. Prosecutions were ordered in twenty-five cases for the sale of colored oleomargarine as butter, in nine cases for the sale of uncolored oleomargarine as butter, in five cases for sales without licenses, and in a single case for its sale without the affixing of the required stamp upon the retail package. Twenty cases for violations of the Oleomargarine Act were terminated during the year. Of these, twelve were brought for the sale of colored oleo, one for not affixing the proper stamp, and in seven cases the offense included sale without having taken out a license. I desire strongly to reaffirm my judgment of the value of the Amendment of 1913 by which the color limit allowed for this product was fixed in definite terms. The result has been a much more general observance of the law's requirements and a very marked advantage to the oleo consumer, in that not only was he more perfectly protected in securing butter when he asked for butter, but in getting his oleo at a fair price when he asked for oleo.

Eggs

Aside from such supervision of the egg supply as was involved in the enforcement of the Cold Storage Act, the chemists of the Bureau have, during the year, examined two hundred and sixty-six samples of eggs in shell and of broken eggs in various states of preparation. These examinations resulted in the bringing of fifty-seven prosecutions during the year. Nearly half of these prosecutions were instituted with respect to frozen canned eggs found unfit for consumption. Out of the remaining prosecutions of this kind, the larger part were brought under the Rotten Egg Act, but a few cases were instituted under the General Food Act because the eggs were sold for fresh when, in fact, they were stale eggs. Fourteen cases were successfully terminated during the year in cases brought for the sale of eggs unfit for food purposes.

Sausage

One hundred and forty-seven samples of sausage were analyzed during the year. Samples thus examined represent fairly well the several classes of these products chiefly sold in the State. The ex-

aminations resulted in the instituting of thirty-six prosecutions. Nearly all of these cases were due to the addition of an excess of water to the sausage meat. Most of these excesses were found in sausage that had been shipped into the State. The sausage makers of the Commonwealth are in nearly all cases meeting the requirements of the law.

Lard

Forty-six samples of lard were examined by the chemists during the year, and thirteen cases instituted for violation of the Lard Act. These cases were all brought because of the sale of compound lard as lard, or because of the adulteration of lard by the addition of beef fat products along the chief mode of adulteration practiced in relation to this product.

Milk and Cream

The chemists analyzed during the year five thousand forty-eight samples of milk and one thousand one hundred and seventy-six samples of cream. The taking of samples was so planned as to cover most of the months of the year. As the result of the examinations, eight hundred and sixty-three prosecutions were ordered. In other words, about fourteen per cent. of the examinations resulted in the finding of adulteration of some kind. This percentage was slightly higher than that discovered in 1916, namely, about twelve per cent. The violation of the law affected the creams in about equal proportion with the milks. Somewhat less than one-third of the cases were brought because the milks were distinctly below the legal standard, although the evidence was not of such order as to warrant the specific charge of skimming or watering, but a much larger number of cases afforded very distinct evidence of either the addition of water or the removal of fat, or both.

Ice Cream

The chemists analyzed during the year three hundred and fifteen samples of ice cream. These examinations resulted in the instituting of only eighteen prosecutions, all brought because of deficiencies in the amounts of butter-fat contained in these products. Seventeen cases brought for violation of the Ice Cream Act of 1909 were terminated in 1917. In general, it may be commented that the enactment of the Ice Cream Law and its enforcement resulted in a very great improvement in the average quality of the ice cream sold in the Commonwealth. The result has been the almost entire elimination of

very low grade products from sale under this name. There is ground, also, for the conviction that the result has been to exclude a very large fraction of the ice cream most objectionable from a sanitary point of view.

Butter and Cheese

The chemists analyzed one hundred and fifty samples of these products in 1917, but the examinations resulted in no findings that called for prosecutions under the acts covering these commodities.

Vinegar

The one hundred and thirty-nine samples of vinegar analyzed in 1917 led to the ordering of fifteen prosecutions for violation of the Vinegar Law, nearly all for the sale as cider vinegar of other, less expensive vinegar products.

Fruit Syrups and Non-Alcoholic Drinks

There were examined in 1917 seven samples of fruit syrups and three hundred and twenty-six samples of non-alcoholic drinks sold under a great variety of names. In consequence of these examinations, prosecutions were ordered in four cases for the sale of fruit syrups that were misbranded or colored with coal tar dye; and in the case of one hundred and two samples of non-alcoholic drinks. Most of the non-alcoholic drink prosecutions were ordered because of what was virtually misbranding, at least the selling, under names of specific fruits, of drinks that contained no fruit juice or real fruit flavor. There were, however, few cases in which the materials contained prohibited preservatives or were colored with coal tar dye. Twenty-one of these cases were instituted because beverages sold as non-alcoholic drinks were, in fact, not of this character, but contained from two to upwards of eight per cent. of alcohol. In each of these cases of the finding of an alcoholic nature, in addition to the bringing of suits for violation of the Non-Alcoholic Drinks Act where misbranding or adulteration was involved, information as to the finding was lodged with the proper district attorney. The result was the institution in all but one of the counties concerned of suits against the offenders also for violation of the Liquor Law. There were terminated during the year one hundred and nine cases under the Non-Alcoholic Drinks Act of 1909, twenty-one of these cases having been brought because of the presence of an excessive amount of alcohol and twelve because of the addition of prohibited preservatives of coal tar dye; the remainder chiefly because of misbranding.

Foods in General

In addition to the products coming under the special laws mentioned in the preceding paragraphs, there were nine hundred and fifty-one samples of such nature that their sales were governed by the General Food Act. Appendix A exhibits the great variety of materials belonging to this group: Bakery products, puddings and dessert preparations, one hundred and two; canned fruits and vegetables, ninety-four; dried fruits, forty-one; confectionery, fifty-seven; flavoring extracts, six; flours, one hundred and four; fruit butters, jams, etc., thirty-three; honey and syrups, twenty-seven; ketchup, relishes and oils, one hundred and thirty-four; fish, canned, dried, etc., one hundred and thirty-four; meats, canned and fresh, forty-six; spices, twenty-six; miscellaneous, one hundred and forty-seven. As the result of these examinations, one hundred and forty-eight prosecutions were ordered. List B in the Appendix shows in detail the grounds for this action so that detailed comment at this point is unnecessary, except with regard to a few of the most conspicuous matters.

The use of undesirable chemical preservatives in canned foods has been almost entirely eliminated. Where the law permits the addition of sulphur dioxide, as in the case of dried fruits and molasses, there steadily appear occasional instances of failure to notify the purchaser by the affixing of the proper stamp upon the retail package. Fully one-third of the prosecutions ordered were brought because of such neglect, or because of the presence of sulphur dioxide in cherries and Maraschino cherry preparations in excessive amounts. The sale of cod fish containing boric acid was the ground for a considerable number of prosecutions ordered. In particular, mention may be made of a number of prosecutions brought on account of the sale of Mrs. Price's Canning Compound which is, in fact, a preparation composed almost entirely of ordinary, commercial boric acid.

The appearance on the market, in these days of high priced eggs, of a great variety of "egg substitutes" is also deserving of mention. These products may possess useful qualities, not chiefly due to egg but to roasted starches of one kind or another. There is no objection to the sale of roasted starch, but the manner of the advertising and branding of these products is very much to be condemned. Designs, devices, names and claims on the label will all mislead the buyer as to the nature and value of the package contents, and materials that contain little or no egg at all are claimed to possess the virtues of many times more eggs than the dry matter in the package could possibly represent.

ACKNOWLEDGMENTS.

In closing this Preliminary Report, permit me, Sir, to express to you my earnest appreciation of the cordial support you have uniformly given to me in my work. I desire to acknowledge also my great indebtedness to Deputy Attorney General William M. Hargest for his wise counsel upon matters of law and for his valued assistance in the legal proceedings which I have caused to be instituted for the enforcement of the several laws committed to my care. Last, but not least, I desire to record my appreciation of the continued loyalty and fidelity of the force of the Bureau's office, the special agents and the chemists assisting me in this work.

Very respectfully,

JAMES FOUST,

Dairy and Food Commissioner.

A. SUMMARY LIST OF ARTICLES ANALYZED BY CHEMISTS OF THIS BUREAU DURING THE YEAR 1917.

Article.	Number Analyzed.
COLD STORAGE PRODUCTS:	
Eggs,	28
Fish, Butter,	7
Fish, (no name given),	6
Fish, Sea Bass,	1
Fish, Smelts,	24
Fish, White,	4
Turkey,	3
	73
DAIRY PRODUCTS:	
Butter,	128
Cheese,	32
Cream,	1,176
Milk, Butter,	4
Milk, Condensed,	6
Milk, Evaporated,	13
Milk, Skimmed,	65
Milk,	4,960
	6,374
EGGS:	
Dried egg content,	1
Fresh, in shell,	148
Frozen canned eggs,	107
Frozen egg content,	5
Eggs, opened,	4
Powdered,	1
	266
FRUIT SYRUPS:	
Orange,	1
Peach,	1
Raspberry,	2
Strawberry,	1
Tamarind,	1
Vanilla,	1
	7
ICE CREAMS:	
Caramel,	3
Cherry,	5
Chocolate,	12
Ice Cream (no flavor given),	20
Maple-walnut,	2
Orange,	1
Peach,	4
Pineapple,	2
Strawberry,	1
Vanilla,	238
Walnut,	3
	315
LARD,	46

SUMMARY—Continued.

Article.	Number Analyzed.
NON-ALCOHOLIC DRINKS:	
Aco,	2
Ale,	1
Ale, Ginger,	3
Ale, Hop,	1
American Hunyadi Split,	1
Barma,	1
Beverage Notax,	1
Beverage, Seaboard,	1
Bevo,	1
Birch Beer,	14
Bismac,	1
Boko,	1
Bola,	1
Bruin,	1
Cerva,	1
Champanale, Carbonated,	1
Champanale, Ginger,	1
Cherry Allen,	1
Cider, Apple,	4
Cider, Cherry,	5
Cider, Grape,	2
Cider, Hard,	5
Cider, Orange,	2
Cider, Sweet,	12
Clair-Mead,	1
Cream of Hops,	1
Creamo,	2
Crescent,	1
Dixie Pond,	2
Elko,	1
Grape Arcola,	1
Grape Fruitola,	1
Grape Juice,	13
Grape Punch,	1
Hallon Saft,	1
Herb Beer,	1
Hop Tone,	1
Iron Blow,	1
Lemonade,	1
Lemon Juice,	1
Lime Juice,	1
Loganberry Juice,	3
Malt Nutrine,	1
Malto Hops,	1
Near Beer,	1
Nerveza,	1
New Schlitz,	2
Nulo,	4
Orangeade,	3
Orange Julep,	2
Pablo,	1
Phosphate, Cherry,	2
Phosphate, Orange,	1
Piccolo,	1
Pin-ap-ola,	1
Pineapple Juice,	1
Plezol,	1
Pop, Cherry,	8
Pop, Chocolate,	5
Pop, Cream Nectar,	1
Pop, Grape,	3
Pop, Lemon,	1
Pop, Orange,	2
Pop, Raspberry,	10
Pop, Strawberry,	29
Pop, Teaberry,	1

SUMMARY—Continued.

Article.	Number Analyzed.
NON-ALCOHOLIC DRINKS—Continued:	
Punch, Royal Cherry,	1
Root Beer,	1
Sarsaparilla,	2
Smash, Almond,	1
Smash, Cherry,	3
Smash, Grape,	2
Smash, Orange,	3
Soda, Cherry,	36
Soda, Cream,	3
Soda, Grape,	3
Soda, Lemon,	5
Soda Water (no flavor given),	1
Soda, Orange,	5
Soda, Pear,	1
Soda, Pineapple,	2
Soda, Raspberry,	16
Soda, Strawberry,	34
Soda, Vanilla,	27
Summer Drink,	1
Tokay Crush,	1
Zizz,	2
	326
OLEOMARGARINE,	57
SAUSAGE:	
Sausage, Bologna,	24
Sausage, Frankfurters,	10
Sausage, Fresh Pork,	53
Sausage, Liver Pudding,	3
Sausage, Pork and Beef,	1
Sausage, Smoked,	1
Sausage, Summer,	1
Sausage, Vienna Style,	9
Sausage, Wieners,	45
	147
VINEGAR:	
Vinegar, Cider,	123
Vinegar, Distilled,	3
Vinegar, White,	7
Vinegar, White Distilled,	4
Vinegar, White Wine,	2
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FOOD PRODUCTS.

BREAD, CAKES AND PUDDINGS:	
Bread, Gluten,	8
Bread, Whole Wheat,	17
Cake, Bran Crisps,	1
Cake, Chocolate,	32
Cake, Currant,	1
Cake, Drop,	5
Cake, Lady Fingers,	12
Cake, (no name given),	1
Cake, Posteffi,	

SUMMARY—Continued.

Article.	Number Analyzed.
FOOD PRODUCTS—Continued.	
BREAD, CAKES AND PUDDINGS—Continued:	
Cake, Pound,	2
Cake, Sponge,	31
Cornstarch,	4
Gelatin,	3
Jello,	1
Jello, Cherry flavor,	2
Jello, Strawberry flavor,	2
Jiffy Jell,	7
Jiffy Jell, Strawberry flavor,	1
Puddine, Orange flavor,	1
Pudding, Plum,	1
	102
CANNED FRUITS AND VEGETABLES:	
Apples,	1
Beans,	2
Beans, Green String,	1
Cherries,	53
Cherries, Maraschino,	9
Corn,	1
Mushrooms,	4
Okra,	1
Peaches,	1
Pears,	4
Peas,	3
Plums,	1
Raspberries,	2
Rhubarb,	1
Sauer Kraut,	1
Tomatoes,	9
	94
DRIED FRUITS:	
Apricots,	6
Dates,	3
Figs,	10
Peaches,	21
Pears,	1
	41
CONFECTIONERY:	
Assorted Mints,	1
Candied Citron,	1
Candied Lemon,	1
Candied Orange,	1
Candy, (no name given),	8
Candy Cherries,	1
Caramels, Almond Cream,	1
Caramels, Chocolate,	1
Caramels, Peanut,	1
Chocolate Bars,	2
Chocolate Buds,	1
Chocolate Butter Daisies,	1
Chocolate Creams,	3
Chocolate Eggs,	3
Chocolate Jumbo Suckers,	2
Chocolate Lunch Bars,	1

SUMMARY—Continued.

Article.	Number Analyzed.
FOOD PRODUCTS—Continued.	
CONFECTIONERY—Continued:	
Chocolate Nut Creams,	1
Fudge (no flavor given),	1
Fudge, Filbert,	1
Gum Drops,	2
Jelly Beans,	1
Lemon Drops,	4
Lemon Slices,	1
Licorice, Sweet Jujube,	1
Lime Drops,	5
Lime Fruit Drops,	3
Marshmallows,	4
Marshmallow Creme,	1
Marshmallow Topping,	1
Mint Pillows,	1
Sour Balls,	1
Stick Candy (lemon flavor),	1
	57
FLAVORING EXTRACTS:	
Extract, Lemon,	1
Extract, Vanilla,	4
Vanilla Substitute,	1
	6
FLOUR:	
Flour, Barley,	1
Flour, Potato,	2
Flour, Wheat,	101
	104
FRUIT BUTTERS, JAMS, JELLIES AND PRESERVES:	
Butter, Apple,	3
Butter, Peanut,	4
Jam, Gooseberry,	1
Jam (no name given),	2
Jam, Pineapple,	1
Jelly, Apple,	3
Jelly, Compound,	1
Jelly, Crabapple,	2
Jelly, Currant,	2
Jelly, Currant-Apple,	1
Jelly, Strawberry,	2
Marmalade,	1
Marmalade, Grapefruitola,	1
Marmalade, Orange,	2
Marmalade, Quince,	2
Preserves, Apple and Peach,	1
Preserves, Apple and Raspberry,	1
Preserves (no name given),	1
Preserves, Raspberry,	1
Preserves, Strawberry,	1
	33

SUMMARY—Continued.

Article.	Number Analyzed.
FOOD PRODUCTS—Continued.	
HONEY AND SYRUPS:	
Honey,	10
Mapleine,	1
Molasses,	2
Syrup, Corn,	2
Syrup, Grenadine,	4
Syrup, Maple,	5
Syrup, Orangeade,	1
Syrup, Orzata,	1
Syrup, Table,	1
	27
KETCHUPS, OILS, PICKLES, RELISHES, ETC.:	
Capers, French,	1
Chow-Chow,	1
Chutney,	2
Chutney, Tomato,	1
Conserve, Tomato,	1
Gherkins, Sweet,	5
Horseradish,	3
Ketchups,	74
Mustard, Prepared,	1
Oil, Olive,	17
Oil, Salad,	1
Olives, Stuffed,	1
Pickles, Sour,	1
Pickles, Sweet,	4
Pickles, Sweet Spiced,	6
Pimentoes,	1
Relish, Sweet,	1
Relish, Tomato,	1
Salad, Onion,	1
Sauce, Bohemian,	1
Sauce, H. P.,	1
Sauce, Pepper,	1
Sauce, Table,	1
Sauce, Tomato,	6
Sauce, Worcestershire,	1
	134
FISH, CANNED, DRIED AND FRESH:	
Codfish, Canned, Dried and Fresh,	49
Codfish, Shredded,	7
Codfish, Threaded,	11
Hake,	1
Halibut, Smoked,	1
Fish (no-name given),	5
Fish, Dried,	8
Fish Flakes,	4
Fish, Gray,	1
Fish Roe,	1
Fish, Threaded,	2
Mackerel, Salt,	6
Mackerel, Soused,	1
Oysters, Fresh,	14
Salmon,	6
Sardines, Canned,	9
Sardines, with mustard,	1
Shrimp, Canned,	7
	134

SUMMARY—Continued.

Article.	Number Analyzed.
FOOD PRODUCTS—Continued.	
MEATS, CANNED AND FRESH:	
Beef, Corned,	1
Beef, Dried,	3
Beef, Ground,	3
Chicken,	3
Goat Meat,	3
Hash, Corned Beef,	1
Lamb,	1
Meat Loaf,	1
Meat-O,	1
Pigs Feet,	1
Pork, Fresh,	2
Pork and Beans, Canned,	10
Potted Meat, Canned,	3
Rabbits,	3
Steak, Hamburg,	1
Steak, Sirloin,	1
Turkey,	1
	46
SPICES, ETC.:	
Allspice,	3
Cinnamon,	3
Cloves,	3
Ginger, Ground,	3
Mustard, Ground,	3
Nutmegs,	3
Pepper, Black,	8
Pepper, Red,	1
Pepper, White,	2
	26
MISCELLANEOUS:	
Almond Meal,	2
Arrowroot,	1
Baking Powder,	3
Baking Soda,	1
Bouillon,	1
Breakfast Food,	1
Canning Compound, Mrs. Prices,	6
Canteloupe,	1
Chicory,	1
Cocoa,	1
Cocoanut, Shredded,	1
Coffee, Beverage,	6
Coffee, Essence,	1
Coffee, Ground,	1
Concentrated Tomato,	3
Cranberries,	1
Cream of Barley,	1
Cream of Tarter,	1
Curry Powder,	1
Delico (Double Dessert),	1
Drinket,	1
Edible Bran,	1
Egg Coloring,	1
Egg-ine,	1
Eggnit,	1

SUMMARY—Continued.

Article.	Number Analyzed.
FOOD PRODUCTS—Continued.	
MISCELLANEOUS—Continued:	
Eggno,	2
Egg-Nu,	2
Egg-O-Gene,	1
Egg-Save,	1
Egg-Sub,	1
Egg-Vito,	1
Farina,	1
Fish Balls, Canned,	1
Grapes,	1
Grapefruit,	1
Homiuy,	1
Ice Cream Powder,	3
Jelly Powder,	1
Jelly Tablets,	1
Jelly Tablets (Strawberry flavor),	1
Loganberries,	1
Macaroui,	2
Manioca,	1
Mincemeat, Canned,	1
Mothers Oats,	1
My-T-Fine Dessert,	1
Nesnah,	1
Noodles,	2
Noodles, Egg,	11
Orauges,	1
Orange Peel,	1
Orange Powder,	1
Our Dessert, (Raspberry flavor),	1
Peanuts, Salted,	2
Pie Preparation,	1
Potatoes,	2
Sago,	1
Salt,	9
Salt, Celery,	2
Satoin,	1
Sava-egg,	1
Saon Food,	1
Scrapple,	1
Spaghetti,	2
Spinach,	2
Soup, Squab,	1
Soup, Tomato,	1
Strawberries,	1
Sugar, Maple,	2
Sweet Marjoram,	20
Tapioca,	1
Tomatoes,	2
Tomato Paste,	3
Walnuts, English,	6
Wheatena,	1
	147
Total under heading "Food Products,"	951

SUMMARY—Continued.

Article.	Number Analyzed.
RECAPITULATION.	
Butter,	128
Cheese,	22
Cream,	1,176
Milk,	5,048
Cold Storage Products,	73
Eggs,	266
Fruit Syrups,	7
Ice Cream,	315
Lard,	46
Non-Alcoholic Drinks,	326
Oleomargarine,	57
Sausage,	147
Vinegar,	139
Food Products,	951
	8,701

NUMBER OF PROSECUTIONS ORDERED DURING THE YEAR, 1917, ARRANGED BY MONTHS AND THE VARIOUS ACTS.

NUMBER ORDERED DURING EACH MONTH:		NUMBER ORDERED UNDER EACH ACT:	
January,	86	Cream and Milk,	863
February,	34	Pure Food,	148
March,	131	Non-Alcoholic Drinks,	102
April,	227	Cold Storage,	71
May,	185	Eggs,	57
June,	78	Oleomargarine,	40
July,	138	Sausage,	36
August,	72	Ice Cream,	18
September,	37	Vinegar,	15
October,	127	Lard,	13
November,	195	Fruit Syrup,	4
December,	57		
Total,	1,367		1,367

C. CASES TERMINATED.

THE FOLLOWING TABLE GIVES A LIST OF ARTICLES ANALYZED BY CHEMISTS AND FOUND TO BE IN VIOLATION OF THE FOOD LAWS, AND THE NUMBER OF SAMPLES OF EACH PRODUCT ON WHICH PROSECUTIONS WERE BASED AND TERMINATED.

COLD STORAGE ACT, 1913, IN VIOLATION OF:

Cold Storage Butter, not properly marked,	4
Cold Storage Eggs, not properly marked,	53
sold as and for fresh,	1
Cold Storage Canned Eggs, unfit for food purposes when placed in storage,	3
Cold Storage Fish, not properly marked,	34
Cold Storage Smelts, not properly marked,	4
Cold Storage Turkey, not properly marked,	4
	103

EGG ACT, 1909, IN VIOLATION OF:

Eggs, unfit for food purposes,	11
unfit for food purposes, to be used in bakery,	3
	14

FOOD ACT, 1909, IN VIOLATION OF:

Apricots, Dried, contained undeclared sulphur dioxide,	6
Cabbage, decomposed and unfit for food purposes,	1
Cakes (no name given), colored yellow with a coal tar dye in imitation of eggs,	6
Cake, Sponge, colored yellow with a coal tar dye in imitation of eggs,	9
Canning Compounds, contained boric acid,	5
Candy, coated with a resinous glaze,	1
Candy, dirty, unfit for food purposes,	2
Catsup, Tomato, decomposed and unfit for food purposes,	1
Cheese, unfit for food purposes,	1
Cherries, Canned, contained sulphur dioxide,	13
Cherries, Maraschino, contained sulphur dioxide,	4
Cider, contained sulphur dioxide,	3
Dates, unfit for food purposes,	1
Eggs, Misbranded,	2
Eggs, unfit for food purposes,	4
Extract, Lemon, below the legal standard in strength,	2
Extract, Vanilla, below the legal standard in strength,	2
Fish (no name given), unfit for food purposes,	4
Fish, Cod, contained added boric acid,	12
Fish, Cod, Shredded, contained added boric acid,	1
Fish, Mackerel, unfit for food purposes,	1
Fish, Middles, contained added boric acid,	1
Flour, Rye, unfit for food purposes,	1
Flour, Wheat, contained nitrites,	8
Fudge, coated with a resinous glaze,	1
Fudge, Chocolate, misbranded and coated with a resinous glaze,	1
Goat Meat, sold as and for mutton,	5
Grapes, decomposed and unfit for food purposes,	2
Ham, unfit for food purposes,	3
Jello, Cherry, misbranded,	1
Jelly, Currant, misbranded,	1
Lamb, Leg of, decomposed and unfit for food purposes,	1
Meal, Almond, contained prussic acid,	1
Meat, Decomposed and unfit for food purposes,	1
Mushrooms, Canned, contained sulphur dioxide,	1
Noodles, artificially colored,	1
Olive Oil, adulterated with cottonseed oil,	3
Orange Peel, unfit for food purposes,	1
Orange Syrup, artificially colored with coal tar dye,	1
Orangeade Syrup, artificially colored with a coal tar dye,	1
Oysters, contained added water,	2
Peaches, Dried, contained undeclared sulphur dioxide,	15

FOOD ACT, 1909, IN VIOLATION OF—Continued.

Peanuts, Salted, wormy, and unfit for food purposes,	1
Pears, Dried, contained undeclared sulphur dioxide,	1
Peas, Canned, unfit for human consumption,	1
Potatoes, frozen and unfit for food purposes,	1
Rabbits, decomposed and unfit for food purposes,	3
Raisins, Dried, contained undeclared sulphur dioxide,	6
Sago, contained tapioca,	1
Sausage, Bologna, contained an excessive amount of water,	2
Sausage, Frankfurters, unfit for food purposes,	1
Steak, Hamburg, preserved with sulphites,	8
Sweet Breads, unfit for food purposes,	1
Sweet Marjoram, contained coriaria leaf,	11
Tomatoes, Canned, decomposed and unfit for food purposes,	2
Tomatoes, Whole, decomposed and unfit for food purposes,	2
Turkey, decomposed and unfit for food purposes,	1
Vanilla Substitute, misbranded,	3
Walnuts, English, decomposed and unfit for food purposes,	1
	180

ICE CREAM ACT, 1909, IN VIOLATION OF:

Ice Cream, Chocolate, below the legal standard in butter-fat,	3
Ice Cream (no flavor given), below the legal standard in butter fat,	4
Ice Cream, Strawberry, below the legal standard in butter-fat,	1
Ice Cream, Vanilla, below the legal standard in butter-fat,	9
	17

LARD ACT, 1909, IN VIOLATION OF:

Lard, adulterated with beef fat and cottonseed oil,	10
Lard, composed entirely of beef fat and cottonseed stearin,	1
Lard, contained beef products, sold as pure lard,	2
Lard, Compound, sold as pure lard,	1
Lard, Imitation, sold as pure lard,	5
	19

MILK ACT, 1911, IN VIOLATION OF:

Cream, low in butter-fat,	124
Milk, colored with annatto,	4
Milk, low in butter-fat,	27
Milk, low in butter-fat, partially skimmed,	1
Milk, low in butter-fat, watered,	2
Milk, low in butter-fat and solids,	37
Milk, low in butter-fat and solids, partially skimmed,	13
Milk, low in butter-fat and solids, partially skimmed and and watered,	3
Milk, low in butter-fat and solids, skimmed,	110
Milk, low in butter-fat and solids, skimmed and watered,	3
Milk low in butter-fat and solids, watered,	47
Milk, low in solids,	9
Milk, low in solids, watered,	21
Milk, skimmed,	4
Milk, Watered,	65
Skimmed Milk, watered,	2
	672

NON-ALCOHOLIC DRINK ACT, 1909, IN VIOLATION OF:

Bis Mac, contained sulphites,	1
Cider, contained an excessive amount of alcohol,	12
Cider, Apple, contained an excessive amount of alcohol,	1
Cider, Apple, misbranded, contained no apple juice,	1
Cider, Cherry, misbranded, artificially colored and flavored,	1

NON-ALCOHOLIC DRINK ACT, 1909—Continued.

Cider, Cherry, misbranded, contained an excessive amount of alcohol,	2
Cider, Cherry, misbranded, contained salicylic acid and an excessive amount of alcohol,	1
Cider, Dixon, contained an excessive amount of alcohol,	1
Cider, Dixon, misbranded, artificially colored and contained salicylic acid,	1
Cider, Grape, contained an excessive amount of alcohol,	2
Cider, Orange, misbranded, artificially colored and flavored,	1
Grape Juice, contained sulphur dioxide,	3
Grenadine Syrup, colored with a coal tar dye,	3
Malt Mead, contained sulphites,	1
Orangeade, misbranded,	3
Orangeade, artificially colored,	3
Phosphate, Cherry, artificially colored and flavored,	3
Pop, Cherry, misbranded, artificially colored and flavored,	5
Pop, Chocolate, misbranded,	1
Pop, Grape, misbranded,	1
Pop, Lemon, misbranded, artificially colored,	1
Pop, Raspberry, misbranded,	3
Pop, Raspberry, misbranded, artificially colored and flavored,	3
Pop, Strawberry, an imitation pop not properly labelled,	1
Pop, Strawberry, misbranded,	9
Pop, Strawberry, misbranded, artificially colored and flavored, contained no fruit juice,	7
Punch, Cherry, contained salicylic acid and colored with a coal tar dye,	1
Smash, Cherry, misbranded,	1
Soda, Cherry, artificially colored and flavored,	9
Soda, Cherry, misbranded,	2
Soda, Cherry, misbranded, artificially colored and flavored,	1
Soda, Grape, artificially colored and flavored,	3
Soda, Lemon, misbranded, contained no lemon juice,	1
Soda, Orange, artificially colored and flavored,	1
Soda, Orange, misbranded,	1
Soda, Pear, misbranded,	1
Soda, Pineapple, artificially colored and flavored,	1
Soda, Raspberry, artificially colored and flavored,	3
Soda, Raspberry, misbranded, artificially colored and flavored,	1
Soda, Strawberry, artificially colored and flavored,	5
Soda, Strawberry, misbranded, artificially colored and flavored,	1
Soda, Strawberry, misbranded, artificially colored and flavored; sweetened with saccharin,	1
Soda, Strawberry, sweetened with saccharin,	1
Soda, Vanilla, contained coumarin,	3
Vanilla Syrup, artificially colored,	1
Zizz, an alcoholic drink sold as and for a non-alcoholic beverage,	2
	109

OLEOMARGARINE ACT, 1901, IN VIOLATION OF:

Oleomargarine, colored,	3
Oleomargarine, colored, served in restaurant and no license,	1
Oleomargarine, colored, sold for butter and no license,	8
Oleomargarine, not properly stamped,	1
Oleomargarine, peddled from wagon,	1
Oleomargarine, sold at wholesale without a license,	1
Oleomargarine, sold at retail without a license,	5
	20

SAUSAGE ACT, 1911, IN VIOLATION OF:	
Sausage, Bologna, contained cereal,	1
Sausage, Bologna, contained added water,	3
Sausage, Fresh, contained vegetable flour,	1
Sausage, Pork, contained added water,	3
Sausage, Vienna Style, contained added water,	1
Sausage, Wieners, contained added water,	7
Sausage, Wieners, contained added water and vegetable flour,	1
	17
VINEGAR ACT, 1901, IN VIOLATION OF:	
Vinegar, Cider, contained added water,	2
Vinegar, Cider, consisting of distilled vinegar, colored; sold for cider vinegar,	5
Vinegar, Cider, consisting of distilled vinegar, colored, low in acidity and sold for cider vinegar,	1
Vinegar, Cider, consisting of distilled vinegar, diluted acetic acid and foreign materials,	1
Vinegar, Cider, consisting of fermented and distilled vinegar; sold for pure cider vinegar,	1
Vinegar, Cider, misbranded,	2
Vinegar, Cider, misbranded, a distilled vinegar, colored,	4
Vinegar, White, low in acidity,	2
	18
Total number of cases terminated,	1,169

RECAPITULATION.

CASES TERMINATED:	
Cold Storage,	103
Egg,	14
Food,	180
Ice Cream,	17
Lard,	19
Milk,	672
Non-Alcoholic Drinks,	109
Oleomargarine,	20
Sausage,	17
Vinegar,	18
Total terminated,	1,169

D. RECEIPTS OF THE DAIRY AND FOOD BUREAU FOR THE YEAR 1917.

Cold Storage Licenses,	$1,212 50
Cold Storage Fines,	3,500 00
Egg Fines,	1,647 50
Food Fines,	5,899 26
Ice Cream Fines,	553 90
Lard Fines,	650 00
Milk Fines, 1901,	194 00
Milk Fines, 1911,	12,087 85
Non-Alcoholic Drink Fines,	2,122 78
Oleomargarine Licenses,	340,975 69
Oleomargarine Fines,	1,310 00
Renovated Butter Licenses,	1,100 00
Sausage Fines,	1,197 00
Vinegar Fines,	700 00
	$373,150 48

E. AMOUNTS EXPENDED FROM THE APPROPRIATION FOR THE MAINTENANCE OF THE WORK OF THE DAIRY AND FOOD BUREAU OF THE PENNSYLVANIA DEPARTMENT OF AGRICULTURE FOR THE YEAR 1917.

Dairy and Food Commissioner's Salary,	$4,000 13
Salary of Clerk, Dairy and Food Bureau,	1,500 00
Messenger's Salary, Dairy and Food Bureau,	900 00
Chemists' Services and expenses,	13,585 26
Clerical and Stenographers,	6,448 87
Special Agents' Salaries,	22,560 00
Attorneys' Assistants and Special,	5,214 55
Traveling and Agents' Expenses,	12,965 01
Enforcing Cold Storage Law,	14,146 49
Total Expenditure for the year,	$81,320 31

EX PARTE UNITED STATES, Petitioner.

UNITED STATES SUPREME COURT—ADVANCE OPINIONS 1916.

(page 72)

Mr. Chief Justice White delivered the opinion of the Court:

The accused pleading guilty to an indictment charging him in several counts with embezzling the money of a national bank of which he was an officer, and making false entries in its books, in violation of §5209, Revised Statutes (Comp. Stat. 1913, §9772) was sentenced to imprisonment in the penitentiary for five years, the shortest term, which under the statute, could have been imposed upon him. At once at his request, over the objection of the United States District Attorney, the court ordered "that the execution of the sentence be, and it is hereby, suspended during the good behavior of the defendant, and for the purpose of this case this term of this court is kept open for five years." The United States moved to set this order aside on the ground that, as it was not a mere temporary suspension of the sentence to enable legal proceedings pending or contemplated to revise it to be taken, or application for pardon to be made, or any other legal relief against the sentence to be resorted to, but, on the contrary, as it was a permanent suspension based upon considerations extraneous to the legality of the conviction or the duty to enforce the sentence, the order of suspension was void, as it was equiva-

lent to a refusal to carry out the statute. The motion was denied. In the opinion giving its reasons for so doing, the court, conceding that the suspension was permanent, stated the general considerations which it deemed it was required to take into view of deciding whether the sentence should be enforced, conceding the legality of the conviction and sentence and their finality, as follows:

"Modern notions respecting the treatment of law breakers abandon the theory that the imposition of the sentence is solely to punish, and now the best thought considers three elements properly to enter into the treatment of every criminal case after conviction. Punishment in some measure is still the object of sentence, but, affecting its extent and character, we consider the effect of the situation upon the individual, as tending to reform him from or to confirm him in a criminal career, and also the relation his case bears to the community in the effect of the disposition of it upon others of criminal tendencies."

After pointing out the peculiar aptitude possessed by a trial judge for the appreciation of such conditions, and the imperative duty which rested upon such judge to consider and weigh the matters stated, and to determine, as an inherent attribute of judicial power, whether a permanent suspension of the term of imprisonment fixed by the statute should be ordered, the circumstances upon which it was concluded that a permanent suspension should be directed were stated in part as follows:

"We took into account the peculiar circumstances under which his crime was committed, having regard to the temptations which from time to time encompassed him, and his personal necessities, and the purposes for which his appropriations were made. Also, the fact that his friends made his employers whole, and that otherwise he had so commended himself to the favor of his employers suffering by his crime, that they at all times, as well as now, evince a disposition to forgive his abuse of their confidence, and to support him against the punishment which the law provides. We find that otherwise than for this crime, his disposition, character, and habits have so strongly commended him to his friends, acquaintances, and persons of his faith, that they are unanimous in the belief that the exposure and humiliation of his conviction are a sufficient punishment, and that he can be saved to the good of society if nothing further is done with him."

After further elaborating considerations of a like nature and stating very many circumstances confirming those mentioned, to leave no room for doubt that its action was intended to be permanent and was based alone on the extraneous circumstances stated, the court said:

"Passing now to the concrete case, we observe for the benefit of the United States that nothing exists in this case which moved the court to suspend the execution of sentence to prevent an abuse of the court's process, or to prevent 'an injustice being done to the defendant,' so far as it may be said that abstract justice required defendant to suffer for his crime. However, we considered the defendant from many standpoints to be as worthy of the benefit of the discretion to suspend the execution of his sentence as any other convict upon whom that favor has hitherto been bestowed."

Following a written demand which was thereafter made upon the clerk to issue a commitment, which was refused by him on the ground that the sentence had been suspended, and the further refusal of the judge to direct the clerk to issue such commitment, the United States sought and obtained a rule to show cause why a mandamus should not be awarded directing the judge to vacate the order of suspension, under which the subject is now before us for consideration.

The remedial appropriateness of the writ of mandamus is at the threshold questioned, but we dispose of the subject by a mere reference to adjudged cases conclusively establishing the want of foundation for the contention. Ex parte Bradley, 7 Wall. 364, 19 L. ed. 214; Life and Fire Ins. Co. v. Wilson, 8 Pet. 291, 8 L. ed. 949; Re Winn, 213 U. S. 458, 53 L. ed. 873, 29 Sup. Ct. Rep. 515; Re Metropolitan Trust Co. 218 U. S. 312, 54 L. ed 1051, 31 Sup. Ct. Rep. 18; Ex parte Metropolitan Water Co. 220 U. S. 539, 55 L. ed. 575, 31 Sup. Ct. Rep. 600. In addition, however, it is urged that, as the right to resort to the extraordinary remedy by mandamus must rest upon the assumption that the order of suspension was absolutely void, therefore the rule for the writ should have been directed not against the judge, but against the clerk, to compel him to issue the commitment. But we pass from its consideration, as we are of opinion that its want of merit will be completely demonstrated by the slightest appreciation of the judicial duties of the court below and the ministerial relation of the clerk of the court to the same.

The return to the rule and the statement in support of the same lucidly portray the contentions involved in the question of power to be decided, and the subject in all its aspects has been elaborately discussed, not only by the printed arguments of the parties, but, in addition, light has been thrown on the general question by an argument submitted by the New York State Probation Commission, explaining the statutory system of parol prevailing in that state, and by an able argument presented by members of the bar of the first circuit in behalf of a practice of mitigating or pretermitting, when deemed necessary, the statutory punishment for crimes, which it is declared has prevailed in the United States courts in that circuit for many years.

The argument on behalf of the respondent concedes that the order of suspension was parmanent, and absolutely removed the accused from the operation of the punishment provided by the statute; and it is further conceded that a suspension of this character was the equivalent of an absolute and permanent refusal to impose, under the statute, any sentence whatever. However absolute may be the right thus asserted, it is nevertheless said it is not without limitation, since it may not be capriciously called into play passing the question whether this assumed restriction is not in the nature of things imaginary as the result of the scope of the authority asserted, let us come to dispose of the contention made by examining the proposition relied upon to sustain it.

They are: 1. That the right to refuse to impose a sentence fixed by statute, or to refuse to execute such a sentence when imposed, is a discretion inhering in the judicial power to try and punish violations of the criminal laws. 2. That even if there be doubt on this subject as an original proposition such doubt is dispelled as the right was recognized and frequently exerted at common law. 3. That the power claimed has also been recognized by decisions of state courts and of the United States courts of original jurisdiction to such an extent that the doctrine is now to be considered as not open to controversy. 4. That whatever may be the possibility of dispute as to this last view, at least it cannot be denied that in both the state and Federal courts, over a very long period of time, the power here asserted has been exercised, often with the express, and constantly with the tacit, approval of the administrative officers of the state and Federal governments, and has been also tacitly recognized by the inaction of the legislative department during the long time the practice has prevailed, to such an extent that the authority claimed has in practice become a part of the administration of criminal law, both state and Federal not subject to be now questioned or overthrown because of mere doubts of the theoretical accuracy of the conceptions upon which it is founded.

1. The contention as to inherent judicial power.

Indisputably under our constitutional system the right to try offenses against the criminal laws, and, upon conviction, to impose the punishment provided by law, is judicial, and it is equally to be conceded that, in exerting the powers vested in them on such subject, courts inherently possess ample right to exercise reasonable, that is, judicial, discretion to enable them to wisely exert their authority. But these concessions afford no ground for the contention as to power here made, since it must rest upon the proposition that the power to enforce begets inherently a discretion to permanently refuse to do so. And the effect of the proposition urged upon the distribution of

powers made by the Constitution will become apparent when it is observed that indisputable also is it that the authority to define and fix the punishment for crime is legislative, and includes the right in advance to bring within judicial discretion for the purpose of executing the statute elements of consideration which would be otherwise beyond the scope of judicial authority, and that the right to relieve from the punishment fixed by law and ascertained according to the methods by it provided, belongs to the executive department.

The proposition might well be left with the demonstration which results from these considerations, but the disregard of the constitution which would result from sustaining the proposition is made, if possible, plainer by considering that, if it be that the plain legislative command fixing a specific punishment for crime is subject to be permanently set aside by an implied judicial power upon considerations extraneous to the legality of the conviction, it would seem necessarily to follow that there could be likewise implied a discretionary authority to permanently refuse to try a criminal charge because of the conclusion that a particular act made criminal by law ought not to be treated as criminal. And thus it would come to pass that the possession by the judicial department of power to permanently refuse to enforce a law would result in the destruction of the conceded powers of the other departments, and hence leave no law to be enforced.

2. The contention as to support for the proposition at common law.

The common law is thus stated in Hale's Pleas of the Crown, Vol 2, Chap. 58, p. 412.

"Reprieves or stays of judgment or execution are of three kinds, viz:

1. Ex mandato regis.

11. Ex arbitrio judicis. Sometimes the judge reprieves before judgment, as where he is not satisfied with the verdict, or the evidence is uncertain, or the indictment insufficient, or doubtful whether within clergy; and sometimes after judgment, if it be a small felony, though out of clergy, or in order to pardon or transportation. Crompt. Just. 22b, and these arbitrary reprieves may be granted or taken off by the justices of gaol-delivery, although their sessions be adjourned or finished and this by reason of common usage. 2 Dyer, 205a, 73 Eng. Reprint, 452."

"111. Ex necessitate legis, which is in case of pregnancy, where a woman is convict of felony or treason."

Blackstone thus expresses it:

"The only remaining ways of avoiding the execution of the judgment are by a reprieve or a pardon; whereof the former is temporary only, the latter permanent.

"1. A reprieve (from reprendre, to take back), is the withdrawing of a sentence for an interval of time; whereby the execution is suspended. This may be, first ex arbitrio judicis; either before or after judgment; as, where the judge is not satisfied with the verdict, or the evidence is suspicious, or the indictment is insufficient, or he is doubtful whether the offense be within clergy; or sometimes if it be a small felony, or any favourable circumstances appear in the criminal's character, in order to give room to apply to the Crown for either an absolute or conditional pardon. These arbitrary reprieves may be granted or taken off by the justices of gaol delivery, although their session be finished, and their commission expired; but this rather by common usage, than of strict right.

"Reprieves may also be ex necessitate legis: as, where a woman is capitally convicted, and pleads her pregnancy; though this is no cause to stay the judgment, yet it is to respite the execution till she be delivered. This is a mercy dictated by the law of nature, in favorem prolis" Bk. 4, chap. 31, pp. 394, 395.

While it may not be doubted under the common law as thus stated that courts possessed and asserted the right to exert judicial discretion in the enforcement of the law to temporarily suspend either the imposition of sentence or its execution when imposed to the end that pardon might be procured, or that a violation of law in other respects might be prevented, we are unable to perceive any ground for sustaining the proposition that, at common law, the courts possessed or claimed the right which is here insisted upon. No elaboration could make this plainer than does the text of the passages quoted. It is true that, owing to the want of power in common law courts to grant new trials, and to the absence of a right to review convictions in a higher court, it is, we think, to be conceded:

(a) That both suspensions of sentence and suspensions of the enforcement of sentences temporary in character were often resorted to on grounds of error or miscarriage of justice which, under our system, would be corrected either by new trials or by the exercise of the power to review. (b) That not infrequently where the suspension either of the imposition of a sentence or of its execution was made for the purpose of enabling a pardon to be sought or bestowed, by a failure to further proceed in the criminal cause in the future, although no pardon had been sought or obtained, the punishment fixed by law was escaped. But neither of these conditions serve to convert

the mere exercise of a judicial discretion to temporarily suspend for the accomplishment of a purpose contemplated by law into the existence of an arbitrary judicial power to permanently refuse to enforce the law.

And we can deduce no support for the contrary contention from the rulings in 2 Dyer, 165a, 205a, and 235a, 73 Eng. Reprint, 359, 452, 519, since those cases but illustrate the exercise of the conceded, reasonable, discretionary power to reprieve to enable a lawful end to be attained. Nor from the fact that common-law courts possessed the power by recognizance to secure good behavior, that is, to enforce the law, do we think any support is afforded for the proposition that those courts possessed the arbitrary discretion to permanently decline to enforce the law. The cases of Hart's Trial, 30 How. St. Tr. 1344 and Reg. v. Dunn, 12 Q. B. 1026, 1041, 116 Eng. Reprint, 1155, 18 L. J. Mag. Cas. N. S. 41, certainly do not tend to so establish, since they simply manifest the exertion of the power of the courts after a conviction and the suffering of the legal penalty to exact from the convicted person a bond for his good behavior thereafter:

3. The support for the power asserted claimed to be derived from the adjudication of state and federal courts.

Coming first to the state courts, undoubtedly there is conflict in the decisions. The area, however, of conflict will be narrowed by briefly stating and contrasting the cases. We shall do so by referring chronologically to the cases denying the power, and then to those who relied upon to establish it.

In 1838 the supreme court of North Carolina in State v. Bennett, 20 N. C. 170 (4 Dev. & B. L. 43), was called upon to decide whether a trialcourt had the right to permanently remit upon condition a part of a criminal sentence fixed by statute. The court said:

"We know that a practice has prevailed to some extent of inflicting fines with a provision that they should be diminished or remitted altogether upon matter thereafter to be done, or shown to the court by the person convicted. But we can find no authority in law for this practice, and feel ourselves bound, upon this first occasion when it is brought judicially to our notice, to declare it illegal."

In 1860, in People v. Morrisette, 20 How. Pr. 118, an accused, after pleading guilty, asked a suspension of sentence and to be then discharged from custody. The court said:

"I am of the opinion the court does not possess the power to suspend sentence indefinitely in any case. As I understand the law, it is the duty of the court, unless application be made for a new trial, or a motion in arrest of judgment be made for some defect in the indictment, to pronounce judgment upon every prisoner convicted of crime by a jury, who pleads guilty. An indefinite suspension of

the sentence prescribed by law is a quasi pardon, provided the prisoner be discharged from imprisonment. No court in the state has any pardoning power. That power is vested exclusively in the governor."

In people v. Brown, 54 Mich. 15, 19 N. W. 571, in deciding that no power to permanently suspend a sentence existed, speaking through Mr. Chief Justice Cooley the court said:

"Now it is no doubt competent for a criminal court after conviction, to stay for a time its sentence; and many good reasons may be suggested for doing so; such as to give opportunity for a motion for a new trial or in arrest, or to enable the judge to better satisfy his own mind what the punishment ought to be (Com. v. Dowdican, 115 Mass. 133); but it was not a suspension of judgment of this sort that was requested or desired in this case; it was not a mere postponement; it was not delay for any purpose of better advising the judicial mind what ought to be done; but it was an entire and absolute remission of all penalty and the excusing of all guilt. In other words, what was requested of the judge was that he should take advantage of the fact that he alone was empowerd to pass sentence, and, by postponing indefinitely the performance of this duty, indirectly, but to complete effect, grant to the respondent a pardon for his crime."

And considering the doctrine as to the want of power thus expounded from the point of view of the common law and of every argument here relied upon, state courts have, in the cases which are in the margin, in careful opinions denied the existence of the power now claimed.

The cases to the contrary are these, omitting one in a court of original jurisdiction in Massachusetts, referred to by counsel, but in which there is no written opinion:

In 1874, in Com. v. Dodican, supra, the right in a criminal case "to lay the case on file," and postpone the sentence was sustained, the court declaring that the practice had long existed and was recognized by statutes, one of which regulated the granting of parol by courts in liquor cases.

The case just cited was approvingly referred to in Sylvester v. State, 65 N. H. 193, 20 Atl. 954, and declared to express the practice long prevailing in New Hampshire.

In 1894, in People ex rel. Forsyth v. Court of Sessions, 141 N. Y. 288, 23 L. R. A. 856, 36 N. E. 386, 15 Am. Crim. Rep. 675, in holding that a trial court had power to permanently suspend a sentence for reasons dehors the legality of the conviction it was declared that such power existed at common law and hence prevailed in the State, this being supported by a quotation from Hale's Pleas of the Crown.

In addition, it was said, referring to a state parol statute enacted subsequent to the conviction, that such statute, while it conferred no new or other power than that possessed at common law, nevertheless imposed the duty to see to it that the power was not lost to impose future punishment after the release if the condition of suspension was violated.

In the cases cited in the margin the power was upheld upon the rulings in Com. vs. Dowdican, and the Forsythe case, supra, or because of a practice long prevailing.

Leaving aside the question of the asserted duty to sustain the doctrine because of the long-established practice, which we shall hereafter consider, we think it clear that the long and settled line of authority to which we have previously referred, denying the existence of the power, is in no way weakened by the rulings which lie at the basis of the cases relied upon to the contrary. In the first place, on the face of the opinion in Com. v. Dowdican, supra, it would seem certain that that case treated the power as being brought by the State legislation which was referred to within the domain of reasonable discretion, since by the effect of that legislation the right to exert such power if not directly authorized, was at least, by essential implication, sanctioned by the State law. In the second place, in so far as the Forsythe case, supra, is concerned and its declaration as to what was the common law upon the subject, the error thus fallen into is not only demonstrated by what we have said as to the common law, but is additionally shown by the fact that the quotation from Hale's Pleas of the Crown, made in the opinion, contains clauses supporting the opinion expressed as to the common law when in fact the clauses in question, it would seem, were, by some error of citation, mistakenly attributed to Hale. We say this because the clauses referred to and attributed to Hale in the quotation are not found in any edition of the Pleas of the Crown which we have been able to examine, and it is stated by counsel for the United States that, after diligent search, no passage containing the clauses has been discovered, and the existence of any edition of the work containing them is not pointed out by opposing counsel. But whether this be well founded or not, as the conclusion concerning the common law which the case expressed is, we think, obviously unsound, we are unable, on the authority of such a mistaken view, to disregard the long established and sound rule laid down in the many State cases which we have quoted.

So far as the courts of the United States are concerned, it suffices to say that we have been referred to no opinion maintaining the asserted power, and, on the contrary, in the opinion in the only case in which the subject was considered, it was expressly decided the

power was wanting. United States v. Wilson, 46 Fed. 748 (1891). It is true that in the District of Columbia the existence of the power was maintained. Miller v. United States 41 App. D. C. 52 (1913). But the unsoundness of the grounds upon which the conclusion was based is demonstrated by what we have previously said; and, aside from this, as the subject was covered by an act of congress conferring power of parol (Act of June 25, 1910, 36 Stat. at L. 864, chap. 433), the case requires no further consideration.

4. The duty to recognize the power as lawful because of its exertion in practice by the State and Federal courts, and the implications arising therefrom.

There is no doubt that in some states, without reference to probation legislation or an affirmative recognition of any doctrine supporting the power, it was originally exerted, and the right to continue to do so came to be recognized solely as the result of the prior practice. State ex rel. Gehrmann v. Osborne, 79 N. J. eq. 430, 82 Atl. 424.

As to the courts of the United States, in one of the circuits, the first, especially in the Massachusetts district, it is admitted the practice has in substance existed for probably sixty years, as the result of a system styled "laying the case on file." The origin of this system is not explained, but it is stated in the brief supporting the practice that courts of the United States have considered the existing State laws as to probation, and have endeavored in a certain manner to conform their action thereto. It is true, also that in the courts of the United States, sometimes in one or more districts in a circuit and sometimes in other circuits, in many instances the power here asserted was exerted, it would seem without any question, there being no objection raised by the representatives of the United States; indeed, it is said that in Ohio, where the power, as we have seen was recognized as existing, it was exerted by Mr. Justice Matthews of this court when sitting at circuit, and there and elsewhere, it is pointed out, the power was also exerted in some instances by other judges then or subsequently members of this court. But yet, it is also true that, numerous as are the instances of the exertion of the power, the practice was by no means universal, many United States judges, even in a district where the power had been exerted, on a charge of incumbency, persistently refusing to exert the power on the ground that it was not possessed. Indeed, so far was this the case that we think it may be said that the exertion of the power under the circumstances stated was intermittent, and was not universal, but partial.

As amply shown by the case before us, we think also it is apparent that the situation thus described was brought about by the scrupulous desire of judges not to abuse their undoubted discretion as to granting new trials, and yet to provide a remedy for conditions in cases where a remedy was called for in the interest of the administration of the criminal law itself, as well as by the most obvious considerations of humanity and public well-being, conditions arising in the nature of things from the state of proof in cases coming before them which could not possibly have been foreseen and taken into consideration by the lawmaking mind in fixing in advance the penalty to be imposed for a particular crime. And the force of this conclusion will become more manifest by considering that nowhere except sporadically was any objection made to the practice by the prosecuting officers of the United States, who, indeed, it is said, not infrequently invoked its exercise. Albeit this is the case, we can see no reason for saying that we may now hold that the right exists to continue a practice which is inconsistent with the Constitution, since its exercise, in the very nature of things, amounts to a refusal by the judicial power to perform a duty resting upon it, and, as a consequence thereof, to an interference with both the legislative and executive authority as fixed by the Constitution. The fact that it is said in argument that many persons, exceeding two thousand, are now at large who otherwise would be imprisoned as the result of the exertion of the power in the past, and that misery and anguish and miscarriage of justice may come to many innocent persons by now declaring the practice illegal, presents a grave situation. But we are admonished that no authority exists to cure wrongs resulting from a violation of the Constitution in the past, however meritorious may have been the motive giving rise to it, by sanctioning a disregard of that instrument in the future. On the contrary, so far as wrong resulting from an attempt to do away with the consequences of the mistaken exercise of the power in the past is concerned, complete remedy may be afforded by the exertion of the pardoning power; and, so far as the future is concerned, that is, the causing of the imposition of penalties as fixed to be subject, by probation legislation or such other means as the legislative mind may devise, to such judicial discretion as may be adequate to enable courts to meet, by the exercise of an enlarged but wise discretion, the infinite variations which may be presented to them for judgment, recourse must be had to Congress, whose legislative power on the subject is, in the very nature of things, adequately complete.

With the conclusion just stated inevitably exact that the rule which is before us be made absolute and that the mandamus issue, nevertheless we are of opinion that the exceptional conditions which we have described require that we exercise that reasonable discretion with which we are vested to temporarily suspend the issue of the writ so as to afford ample time for executive clemency or such other action as may be required to meet the situation. And for this purpose the issue of the writ will be stayed until the end of this term, unless the United States otherwise requests, when it will go as a matter of course.

Rule made absolute.